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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

BENJAMIN AMIR JAHANBANI, Plaintiff and Appellant, v. ALEC BRANDON SUGAR, et al., Defendants and Respondents.	B277322 (Los Angeles County Super. Ct. No. LC099369)

APPEAL from an order of the Superior Court of Los Angeles County, Allan Goodman, Judge. (Retired Judge of the Los Angeles Co. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Carpenter, Zuckerman & Rowley, Paul S. Zuckerman and Nicholas C. Rowley; Khorshidi Law Firm and Omid Khorshidi for Plaintiff and Appellant.

Law Offices of Cleidin Z. Atanous and Cleidin Z. Atanous for Defendants and Respondents.

INTRODUCTION

Benjamin Jahanbani sued Alec Sugar (Sugar) and Carole Sugar for personal injuries arising out of an automobile accident. The jury found in favor of Jahanbani and awarded him $348,900. The trial court granted the Sugars' motion for a new trial. Because the Sugars' motion for a new trial was timely, and the trial court did not abuse its discretion in granting the motion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jahanbani filed his action alleging Sugar was negligent in causing a car accident in September 2012 in the Woodland Hills area of Los Angeles. Jahanbani filed this action in December 2012, and the case went to trial in March and April 2016.

According to Jahanbani, Sugar made a U-turn in front of him from the right-hand lane and hit Jahanbani's front bumper on the passenger side, which forced his car to crash into the curb and hit a planter. The accident occurred at midnight, in front of a school, between two "no U-turn" signs. Immediately after the accident, Jahanbani was bleeding from a cut on his forehead onto his face, clothes, and shoes.

The day after the accident, Jahanbani began experiencing pain in his neck, wrist, back, and leg. Six months to a year after the accident, Jahanbani developed a "drop foot" that affected his gait, which he demonstrated at trial for the jury. Also, every time he got into a car after the accident, he felt as though he was going to get into another accident.

Sugar described the accident differently. He testified he moved into the lane closest to the center of the road, looked over his shoulder and in his rear view and side view mirrors, and prepared to make a U-Turn from the median to drop off one of his passengers in front of the school. He did not see any cars, activated his turn signal, and began to make the U-turn. According to Sugar, Jahanbani tried to pass him on the left by crossing over to the other side of the road. One of Sugar's passengers was injured in the accident and had to go to the emergency room.

Jahanbani's treating neurosurgeon testified the accident caused Jahanbani to suffer nerve impingement and a lumbar disk herniation, numbness in a dermatomal pattern affecting the fifth nerve root coming out of the spine, and weakness in the anterior tibialis muscle that raises his right foot and big toe. The neurosurgeon stated Jahanbani "will continue to have deterioration of his condition" and "may end up with what's called 'permanent foot drop.'" An orthopedic surgeon who examined Jahanbani in January 2014, however, did not diagnose him with a foot drop.

The jury reached a verdict on April 15, 2016, finding Sugar negligent and Jahanbani not negligent. The jury awarded Jahanbani $348,900 in damages, consisting of $14,800 in past economic damages, $105,000 in past noneconomic damages, $9,100 in future economic damages, and $220,000 in future noneconomic damages.

The trial court signed the judgment on May 5, 2016, and the clerk entered it the same day. On May 9, 2016 the court issued a minute order stating: "The Court has reviewed the second version of the judgment in this matter and the objections

to it. [¶¶] The judgment, as amended, has been filed. [¶] Plaintiff is to give notice of entry of judgment." The clerk's certificate of mailing, dated May 9, 2016, stated: "[O]n this date I served the Judgment and the above entitled minute order upon each party or counsel" by mail. Accompanying the minute order was a file-stamped copy of the May 5, 2016 judgment. On May 11, 2016 counsel for plaintiffs served a document titled "Notice of Entry of Judgment."

On May 25, 2016 the Sugars filed a notice of intention to move for a new trial. The Sugars' motion for a new trial, filed June 3, 2016, asked the court to grant a new trial for various reasons, including that trial counsel for Jahanbani had engaged in misconduct, the court had improperly accommodated the schedule of one of Jahanbani's witnesses, the evidence was insufficient to support the verdict, and the damages the jury awarded were excessive. Among the Sugars' arguments was the contention a surveillance video taken of Jahanbani by an investigator and played for the jury at trial showed that, contrary to Jahanbani's testimony and his appearance in court, the accident did not cause him to have a "dropped foot and limp." The Sugars argued the videotape "contradicted [Jahanbani's] claim that he limps and is in pain all day, every day" by showing him "not only walking normally, but running up and down stairs. . . . While [Jahanbani] was wincing in pain sitting in the courtroom, he showed no such behavior [in the videotape] running up and down stairs, back and forth to his car."

Jahanbani opposed the motion on all grounds. Regarding the surveillance video, Jahanbani argued the "jury believed [him] and was unimpressed with defendants' [surveillance] video."

On July 7, 2016 the trial court granted the motion for a new trial. The court stated: "During the trial, [Jahanbani] was permitted to step down from the witness stand and demonstrate for the jury the difficulty he had in properly ambulating. Specifically, he demonstrated that, with each step he took with his 'drop foot,' the foot quite noticeably slapped the floor. He testified this was a direct result of the injuries he sustained in the collision with [Mr. Sugar]. The manner of Mr. Jahanbani's ambulation was distinct and even dramatic; it dramatically demonstrated that he had suffered and was continuing to suffer nerve damage and that the subject collision was a substantial factor in causing that condition." The court ruled that the surveillance video, which the court stated showed Jahanbani "almost trotting" in the street "immediately prior to the trial," was "compelling evidence" that Jahanbani "did not suffer from a drop foot and that he feigned that injury in court." The court also stated the surveillance video showed Jahanbani driving his car aggressively and weaving through lanes to "progress [at] heightened speeds," which the court found showed Jahanbani had "no fear of driving, also contrary to his testimony that he had been traumatized by the collision at issue and that that trauma continued thereafter."

The court concluded the "only reasonable inference is that [Jahanbani] testified falsely with respect to the existence of the drop foot, contrived the demonstration of the drop foot as he illustrated it to the jury, and that his testimony with respect to the nature and extent of his injuries sustained in the collision, and regarding the allegedly incessant pain, all must be viewed as not credible." The court, independently weighing Jahanbani's testimony, found that, because Jahanbani's "testimony about his

injuries was false, his testimony as to the cause of the collision must also be determined to be lacking in credibility." The court concluded that Jahanbani "testified falsely with respect to both liability and damages [and] [t]here is therefore insufficient evidence to support the verdict."

On August 30, 2016 Jahanbani filed a timely notice of appeal from the order granting the Sugars' motion for a new trial, although he checked the box authorizing an appeal from a postjudgment order under Code of Civil Procedure section 904.1, subdivision(a)(2),[1] rather than from an order granting a new trial under section 904.1, subdivision (a)(4). The Sugars did not appeal from the judgment or file a protective cross-appeal. (See *Pacific Corporate Group Holdings, LLC v. Keck* (2014) 232 Cal.App.4th 294, 304 ["a *protective* cross-appeal . . . permits review of a judgment in the event that an order granting a new trial is *reversed*"].)

DISCUSSION

A. *The Motion for a New Trial Was Timely*

"Motions for a new trial . . . are subject to strict time limits that begin to run when the party seeking such relief is served with a written notice of entry of judgment." (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1267 (*Palmer*).) Section 659, subdivision (a), provides in relevant part: "The party intending to move for a new trial shall file with the clerk and serve upon each adverse party a notice of his or her intention to move for a new trial, designating the grounds upon which the

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[1] Statutory references are to the Code of Civil Procedure.

motion will be made and whether the same will be made upon affidavits or the minutes of the court, or both, either: [¶] (1) After the decision is rendered and before the entry of judgment [or] [¶] (2) Within 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him or her by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest . . . ." Section 664.5, subdivision (d), provides: "Upon order of the court in any action or special proceeding, the clerk shall serve notice of entry of any judgment or ruling, whether or not appealable."

The deadlines in section 659 are jurisdictional; the trial court may not to hear a motion for a new trial filed more than 15 days after the date the clerk mails notice of entry of judgment pursuant to section 664.5 or a party serves notice of entry of judgment. (See *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 337 ["the trial court loses jurisdiction to hear a new trial motion if no notice of intent is filed within 15 days of the mailing or service of notice of entry of judgment, or within 180 days of the entry of the judgment"]; *Palmer*, *supra*, 30 Cal.4th at p. 1272 [the time limits in section 659 are "jurisdictional"]; *Simplon Ballpark, LLC v. Scull* (2015) 235 Cal.App.4th 660, 663 [if a motion for a new trial "is untimely, the court has no jurisdiction to rule on it and the order granting the motion is void"].) In addition, the "times specified" in section 659 for filing a motion for new trial "shall not be extended by order or stipulation" of the parties and are not extended for mailing under section 1013. (§ 659, subd. (b); *Kabran*, at p. 337; *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1394.)

This case involves section 659, subdivision (a)(2), because the Sugars moved for a new trial after the court entered judgment on May 5, 2016. As stated, section 659, subdivision (a)(2), provides three deadlines for filing a notice of intent to file a new trial motion: the earliest of (1) 15 days from the date the clerk mails notice of entry of judgment "pursuant to Section 664.5," (2) 15 days from the date a party services notice of entry of judgment, and (3) 180 days after entry of judgment. The parties agree the Sugars' notice of intent was timely under (2) and (3); the issue is whether it was untimely under (1). Specifically, if the clerk gave notice of entry of judgment pursuant to section 664.5 on May 9, 2016, the Sugars' notice of intent to move for a new trial filed on May 25, 2016 was one day late, and the court lacked jurisdiction to rule on it.

The clerk did mail notice of entry of judgment on May 9, 2016, but it was not notice of entry of judgment "pursuant to Section 664.5" because it was not "[u]pon order of the court." (§ 664.5, subd. (d).)[2] "To be service 'pursuant to Section 664.5' [citations] the notice of entry of judgment mailed by the clerk must 'affirmatively state' it is given '"upon order by the court" or under section 664.5.'" (*Palmer*, *supra*, 30 Cal.4th at p. 1277; see *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 64 ["subject to the specified

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[2] Section 664.5, subdivision (b), requires the clerk, "[p]romptly upon entry of judgment," to "serve notice of entry of judgment to all parties who have appeared in the action or special proceeding" and to "execute a certificate of service and place it in the court's file in the cause." But subdivision (b) applies only where the "prevailing party is not represented by counsel."

exception[ ] under . . . section 664.5, subdivision[ ] . . . (b), which make[s] notice by the clerk mandatory—when the clerk of the court mails a file-stamped copy of the judgment, it will shorten the time for ruling on the motion for a new trial only when the order itself indicates that the court directed the clerk to mail 'notice of entry' of judgment"].) The clerk's May 9, 2016 minute order stated that the court had signed the amended judgment and that Jahanbani was to give notice of entry of judgment. But it did not state that the court had ordered or directed the clerk to give notice or that the clerk was giving notice pursuant to section 664.5, nor did it include the usual language indicating court-ordered notice, "The clerk is to give notice." Therefore, the clerk's May 9, 2016 minute order did not commence the 15-day period for the Sugars to file their motion for a new trial. Instead, the 15-day period began when counsel for Jahanbani served notice of entry of judgment on May 11, 2016, and the Sugars' notice of intent to move for a new trial, filed 14 days later on May 25, 2016, was timely.

It is true, as Jahanbani argues, the "written notice of entry of judgment served on the party who moves for a new trial need not, for the purposes of . . . sections [section 659 and 664.5], be a separate document entitled 'notice of entry of judgment.' We have long held that no particular form of notice is required, and that in counties that do not maintain a judgment book a file-stamped copy of the judgment suffices as 'written notice' for these sections." (*Palmer*, *supra*, 30 Cal.4th at p. 1277; accord, *Maroney v. Iacobsohn* (2015) 237 Cal.App.4th 473, 478, fn. 3.) Thus, had the May 9, 2016 minute order stated it was by order of the court or pursuant to section 664.5, service of the order and the file-stamped judgment, or either of them, would have started the 15-

day period. But it didn't, and so the 15-day period did not begin on May 9, 2016, and the motion for a new trial was timely.

B. *The Trial Court Did Not Abuse Its Discretion in Granting the Motion for a New Trial*

"The standards for reviewing an order granting a new trial are well settled. After authorizing trial courts to grant a new trial on the grounds of '[e]xcessive . . . damages' or '[i]nsufficiency of the evidence,' section 657 provides: '[O]n appeal from an order granting a new trial upon the ground of the insufficiency of the evidence . . . or upon the ground of excessive or inadequate damages, . . . *such order shall be reversed as to such ground only if there is no substantial basis in the record for any of such reasons*.' . . . Thus, we have held that an order granting a new trial under section 657 'must be sustained on appeal unless the opposing party demonstrates that no reasonable finder of fact could have found for the movant on [the trial court's] theory.' [Citation.] Moreover, '[a]n abuse of discretion cannot be found in cases in which the evidence is in conflict and a verdict for the moving party could have been reached. . . .' [Citation.] In other words, 'the presumption of correctness normally accorded on appeal to the jury's verdict is replaced by a presumption in favor of the [new trial] order.'" (*Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 411-412 (*Lane*); see *Sandoval v. Qualcomm Incorporated* (2018) 28 Cal.App.5th 381, 420-421.) "'This is particularly true when the discretion is exercised in favor of awarding a new trial, for this action does not finally dispose of the matter. So long as a reasonable or even fairly debatable justification under the law is shown for the order granting the new trial, the order will not be set aside.'" (*Simers v. Los Angeles*

Times Communications, LLC (2018) 18 Cal.App.5th 1248, 1275; see *Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 751 ["given the latitude afforded a judge in new trial motions, orders granting new trials are 'infrequently reversed'"].)

"The reason for this deference 'is that the trial court, in ruling on [a new trial] motion, sits . . . as an independent trier of fact.' [Citation.] Therefore, the trial court's factual determinations, reflected in its decision to grant the new trial, are entitled to the same deference that an appellate court would ordinarily accord a jury's factual determinations." (*Lane*, *supra*, 22 Cal.4th at p. 412.) "The trial court sits much closer to the evidence than an appellate court. Even the most comprehensive study of a trial court record cannot replace the immediacy of being present at the trial, watching and hearing as the evidence unfolds. The trial court, therefore, is in the best position to assess the reliability of a jury's verdict and, to this end, the Legislature has granted trial courts broad discretion to order new trials. The only relevant limitation on this discretion is that the trial court must state its reasons for granting the new trial, and there must be substantial evidence in the record to support those reasons." (*Ibid.*)

Jahanbani argues the trial court abused its discretion because he "presented overwhelming evidence of [his] medical damages, including a neurosurgeon, pain management physician, and neuropsychologist," and the Sugars "presented no witness to dispute [Jahanbani's] drop foot." Both arguments are wrong, one legally, one factually. As discussed, the test is not whether Jahanbani presented overwhelming or even substantial evidence of his medical condition and damages, but whether there was

substantial evidence to support the trial court's reasons for granting a new trial. And there was: the Sugars presented a surveillance video of Jahanbani and the investigator's testimony about what he observed and filmed on March 24, 2016. The surveillance video showed Jahanbani walking briskly and without a noticeable limp, briefly jogging to and from his car, and driving his car aggressively and above the speed limit (including making multiple lane changes in traffic, attempting to pass a bus on the right at a traffic light, and cutting across two lanes of traffic to make a left turn from a left turn lane). The surveillance video contradicted Jahanbani's evidence the accident caused him an injury that affected his ability to walk. The video, along with the investigator's testimony, was substantial evidence on which a reasonable juror could have found for the Sugars on the theory the trial court articulated in its reasons for granting a new trial. Therefore, even if we would not have granted the Sugars' motion for a new trial under these circumstances, under the applicable standard of review we cannot find the trial court abused its discretion in granting the motion.[3]

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[3] Jahanbani does not argue that, even if the trial court properly granted the Sugars' motion for a new trial on damages, the court should not have granted the motion on liability.

DISPOSITION

The order granting a new trial is affirmed. The Sugars are to recover their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.